Worker's Compensation
Department's Legislative Proposals
February 28, 2001

Subject	Statute	Proposal
Definition of employer subject to the Act	102.04(2)	Amend 102.04(2) as follows: Except with respect to a partner or member electing under s. 102.075 members of partnerships or limited liability companies shall not be counted as employees. Except as provided in s. 102.07(5)(a) a person under contract of hire for the performance of any service for any employer subject to this section ~~(1961)~~ shall not constitute an employer of any other person with respect to such service and such other person shall, with respect to such service, be deemed to be an employee only of such employer for whom the service is being performed. *Comment. This deletes an obsolete reference.*
Definition of employer subject to the Act	102.07(4m)	Amend 102.07(4m) as follows: For the purpose of determining the number of employees to be counted under s. 102.04(1)(b) or (c), but for no other purpose, a member of a religious sect is not considered to be an employee if the conditions specified in s, 102.28(3)(b) have been satisfied with respect to that member. *Comment: 102.04(1)(b) excludes certain religious sect members when counting* **non-farm** *employees to determine if an employer is subject to the Act. 102.04(1)(c) relates to* **farm** *employees, to whom the same counting provision should also apply. This corrects an inadvertent oversight.*
Election by corporate officer	102.076	Create 102.076(3) as follows: Corporate officers engaged in maritime employment or interstate commerce who are covered by the Federal Employers Liability Act, the Longshore and Harbor Worker's Compensation Act, or any of its extensions, or the Jones Act, may not elect to waive coverage under the Wisconsin Worker's Compensation Act. *Comment. The Wisconsin Compensation Rating Bureau requested this change. Their attorney indicates it would affect a small number of Great Lakes fishermen. While there is some precedent for waiver or release of Jones Act benefits, a person may not waive LHWCA benefits. This means insurers have liability for the corporate officers based on federal law. Therefore, when corporate officers eligible for LHWCA benefits elect out of Wisconsin's law, insurers continue to collect premium on their wages to cover their exposure under federal law--negating the benefit from opting out. Eligibility for Wisconsin benefits does not preempt any federal claims the corporate officers may wish to make. In short, since there is no financial advantage for them to opt out, and since by doing so, they give up Wisconsin benefits for which they are being charged a premium, the WCRB proposed this change. WCRB educational efforts with these commercial fishermen have not been successful.*

Employee defined	102.07	Create a cross-reference in Chapter 102 to s. 166.03(8)(d). 102.07 Employe defined. "Employe" as used in this chapter means: (19) An emergency management employee or volunteer as defined in s. 166.03(8)(d). *Comment. An attorney representing an injured volunteer suggested the cross-reference.* Section 166.03(8)(d) reads as follows: Employees of municipal and county emergency management units are employees of the municipality or county to which the unit is attached for purposes of worker's compensation benefits. Employees of the area and state emergency management units are employees of the state for purposes of worker's compensation benefits. Volunteer emergency management workers are employees of the emergency management unit with whom duly registered in writing for purposes of worker's compensation benefits. An emergency management employee or volunteer who engages in emergency management activities upon order of any echelon in the emergency management organization other than that which carries his or her worker's compensation coverage shall be eligible for the same benefits as though employed by the governmental unit employing him or her. Any employment which is part of an emergency management program including but not restricted because of enumeration, test runs and other activities which have a training objective as well as emergency management activities during an emergency proclaimed in accordance with this chapter and which grows out of, and is incidental to, such emergency management activity is covered employment. Members of an emergency management unit who are not acting as employees of a private employer during emergency management activities are employees of the emergency management unit for which acting. If no pay agreement exists or if the contract pay is less, pay for worker's compensation purposes shall be computed in accordance with s. 102.11
Work-experience students	102.077(3) 102.07(12m) 102.29(8)	Delete the sunset provisions related to work-experience students. *Comment: Current law authorizes schools to voluntarily insure work-experience students, but only if they get* **no wages** *from the work-site employer. The option is rarely used. The exclusive remedy provision immunizes the work-site employer from tort suits. The sunset provisions were enacted in 1996 and extended in 1998 and 2000. No problems have been reported to the Department.*

Weekly wage • Overtime • Employer's normal full-time work week	102.11(1)(a)	Amend 102.11(1)(a) as follows: Daily earnings shall mean the daily earnings of the employee at the time of the injury in the employment in which the employee was then engaged. In determining daily earnings under this paragraph, overtime shall not be considered. Overtime means hours worked beyond the employer's normal full-time workweek. Premium pay such as time-and-a-half or double time may be earned during the normal workweek or during overtime. If at the time of the injury the employee is working on part time for the day, the employee's daily earnings shall be arrived at by dividing the amount received, or to be received by the employee for such part-time service for the day, by the number of hours and fractional hours of such part-time service, and multiplying the result by the number of hours of the employer's normal full-time working day for the employment involved. The words "part time for the day" shall apply to Saturday half days and all other days upon which the employee works less than normal full-time working hours. The average weekly earnings shall be arrived at by multiplying the employe's hourly earnings by the hours in the employer's normal full-time workweek or by multiplying the employe's daily earnings by the number of days and fractional days in the employer's normal full-time workweek ~~normally worked per week~~ at the time of the injury in the business operation of the employer for the particular employment in which the employee was engaged at the time of the employee's injury, whichever is greater. Except as provided in par. (b), it is presumed that the employer's normal full-time workweek is 24 hours for flight attendants, 56 hours for firefighters, and at least 40 hours for other employes unless there is reasonably clear and complete documentation to rebut it. If the employer has a multi-week schedule with regular alternating hours, the employer's normal full-time workweek is the average number of weekly hours in the multi-week schedule. A workweek is from Sunday to Saturday. *Comment.* *1. Overtime and premium pay are not synonymous. Overtime is not used to calculate earnings under par (a), but is used under par. (d). For most employes, earnings are the larger of paragraphs (a) or (d).* *2. Whether one uses the employe's daily earnings (or hourly earnings) those earnings have always been multiplied by the days (or hours) in the* **employer's** *normal full-time workweek, not the days (or hours) worked by the claimant. True, the department uses the claimant's actual work days (or hours) as a starting point to audit the employer's workweek. But, that does not conclusively determine the workweek.* *3. The confusion is getting worse. In 2000, LIRC and the circuit court refused to consider arguments from the employer regarding its regular schedule. Instead, LIRC and the court determined the workweek under 102.11(1)(a) is based on the "local labor market" not the injury employer's schedule. The department has never used the local labor market under par. (a). The labor market concept used in UI is not used in WC. In WC, the closest one comes to the local labor market is looking at "same or similar" employment under par. (c)--a rarely used section. See* Diane Aronson v. Caregivers Home Health, *No. 00-CV000615, Waukesha County, November 1, 2000.* *4. Adding the hourly formula to the daily formula in the current statute will not change the average weekly earnings. However, for most insurers and employers the hourly formula will make more sense.* *(continued)*

	(continued)	*5. The hourly formula also makes it easier to phrase the 24-, 56- and 40-hour presumptions and the multi-week schedule in modern language. The department's 24-, 56- and 40-hour presumptions need to be codified. They are widely accepted and ease the administration of a complex wage law. Still, sometimes insurers do not accept the 40-hour presumption and refuse to provide reasonably clear and complete documentation to support a different figure alleged by the employer.* *6. With multi-week alternating schedules the question is whether one should one use the hours in the week of injury or average the hours? There are reasonable arguments for each position.* *7. The Sunday-to-Saturday workweek is not a problem but should be codified.*
Weekly wage • Part-time part-of-class	102.11(1)(f)	Amend 102.11(1)(f) as follows: 1. Except as provided in sub. 2, average weekly earnings may not be less than 24 times the normal hourly earnings at the time of injury. 2. The weekly temporary disability benefits for a part-time employee who restricts his or her availability in the labor market to part-time work and is not employed elsewhere may not exceed the average weekly wages of the part-time employment. 3. <u>The members of a regularly scheduled class of part-time employes must do the same type of work and maintain the same regular work schedule. The members of a class do not need to work the same days or shifts, but a schedule is not regular if the minimum and maximum weekly hours scheduled by the employer or actually worked by any member of the class vary by more than 5 hours during the 13 weeks prior to the injury. Employes are not part of a class unless at least 10 percent of the employer's workforce doing the same type of work are members of the class. A class must have more than one employe. An employer may not use multiple locations to establish a class. For State of Wisconsin employees it is presumed that membership in a class is determined separately for each agency or department, although a smaller subunit may used if appropriate.</u> *Comment. These changes codify the department's current procedures.* *1. In a NRA case, the court distinguished a "class" of four part-time watchmen working staggered-days and staggered-shifts from a full-time watchman. See* <u>Allis Chalmers v Industrial Comm.</u>, 215 Wis. 616 (1934). *See also,* <u>Carr's Inc. v. Industrial Comm</u>., 234 Wis. 466 (1940). *2. The 5-hour variance is less than the 8-hour variance approved by the Wisconsin Supreme Court in* <u>Carr's Inc.</u>*, the leading part-time, part-of-class wage case.* *3. 13 Weeks is borrowed from the 90-day period specified for full-time employment in DWD 80.51(1).* *4. The department wage analysts have used the 10-percent concept and required more than one employe in a class at least since the 1980's when Harry Benkert wrote: "The class must be regularly scheduled. We have also administratively determined 'class' to mean more than one employe. There must be a significant number of employes relative to the employment to constitute a class."* *5. Until very recently, the department did not consider multiple locations in determining a class. Recently it has been allowed in some cases. Wage analysts are unanimous that the law would be simpler to administer if the long-standing policy excluding mutiple locations were codified.*

Fraud report	102.125(2)	Delete the requirement for an annual fraud report to the Governor and Legislature (or, alternatively, have the Department report to the Council). *Comment. The Department refers only about 15 cases of alleged fraud annually to district attorneys. They prosecute about 3. This low level of fraud reported and prosecuted does not justify such high-level annual reporting. The Department has issued reports covering the first 5 years of the program. There is nothing new to report.*
Medical fee disputes	102.16(2)(d)	Delete the sunset provision on the fee dispute program. *Comment. The provision was enacted in 1992. The sunset has been extended every two years since then. The program is well established.*
Medical necessity of treatment disputes	102.16(2m)(c)	Amend 102.16(2m) (c) as follows: ~~Before~~ Except as provided in ss. 102.16(1) or 102.18(1), before determining the necessity of treatment provided for an injured employee who claims benefits under this chapter, the department shall obtain a written opinion on the necessity of the treatment in dispute from an expert selected by the department. To qualify as an expert, a person must be licensed to practice the same health care profession as the individual health service provider whose treatment is under review and must either be performing services for an impartial health care services review organization or be a member of an independent panel of experts established by the department under par. (f). The department shall adopt the written opinion of the expert as the department's determination on the issues covered in the written opinion, unless the health service provider or the insurer or self-insured employer present clear and convincing written evidence that the expert's opinion is in error. *Comment. Peer review in 102.16(2m)(c) is an option for compromise orders under 102.16(1) or for an ALJ issuing orders after hearing under 102.18(1), but it was never intended to be a requirement.*
Multiple parties	102.17(1)(c) and (e) 102.20 102.23(1)(d)	Substitute "any" for "either" in four statutes: 102.17(1) (c) ~~Either~~ Any party shall have the right to be present at any hearing, in person or by attorney, or any other agent, and to present such testimony as may be pertinent to the controversy before the department…. 102.17(1) (e) The department may, with or without notice to ~~either~~ any party, cause testimony to be taken…. 102.20 Judgment on award. If ~~either~~ any party presents a certified copy of the award to the circuit court for any county, the court shall, without notice, render judgment in accordance therewith… 102.23(1)(d) …The action may thereupon be brought on for hearing before the court upon the record by ~~either~~ any party on 10 days' notice to the other…. *Comment. "Any" is more appropriate if there are more than 2 parties.*

Safety inspections	102.17(1)(h) 102.57 102.58	1. Re-instate safety inspections; 2. If DOC, then after "department" add "of Commerce." *Comment. DOC has discontinued inspections.*
Statute of Limitations	102.17(4)	1. Eliminate the 12-year statute of limitations for claims involving the loss or total impairment of: • the hand or rest of the arm, • the foot or rest of the leg, • any loss of vision • any brain injury and total or partial knee or hip replacements. 2. Fund existing claims that are otherwise meritorious from the Work Injury Supplemental Benefit Fund (WISBF) for "treatment" after 1/1/2002 regardless of the date of injury. *Comment.* *1. Insurers used to pay these claims voluntarily if the claim was meritorious, except for the statute of limitations. Now, insurers routinely defend against these claims citing the statute of limitations. Since these are pre-existing conditions group health carriers refuse coverage. There has been a significant increase in problems with serious eye injuries and the need for prosthetic devices, both of which essentially require life-long treatment. The need for future knee or hip replacements is a trap for the unwary. Doctors advise holding off surgery as long as possible. Unwary claimants may not know to preserve their right to surgery by filing an application for hearing.* *2. Occupational injuries beyond the 12-year period are currently funded from WISBF.*

Voluntary direct deposit of benefits	102.26(3)(b)	Create a new subparagraph in 102.26(3)(b). 102.26(3)(a) Except as provided in par. (b), compensation exceeding $100 in favor of any claimant shall be made payable to and delivered directly to the claimant in person. (b) 1. The department may upon application of any interested party and subject to sub. (2) fix the fee of the claimant's attorney or representative and provide in the award for that fee to be paid directly to the attorney or representative. 2. At the request of the claimant medical expense, witness fees and other charges associated with the claim may be ordered paid out of the amount awarded. 3. The claimant may request an insurance carrier or employer to deposit payments or awards under this chapter directly in a financial institution by electronic transfer or as otherwise approved by the department. The claimant may revoke consent by providing appropriate written notice. *Comment. 102.26(3)(a) requires compensation over $100 to be "delivered directly to the claimant." This prevents payment to a third party, e.g., the claimant's attorney. Arguably, it prevents direct deposit in a claimant's bank account. Some states specifically authorize direct deposit because it's faster and safer than mail delivered to the home. At least one state, Texas, mandates that insurers give employees a direct deposit option. The financial services consultant for one TPA that is setting up a system to offer the option in other states has requested permission to offer this option in Wisconsin. Their process to approve and generate payments is not changed. The employe must fill out a direct deposit authorization form and may revoke authorization at any time.*
Insurer reimbursement to governmental units that pay living expenses or medical costs	102.27(2)(b)	Amend 102.27(2)(b) as follows: If a governmental unit provides public assistance under ch. 49 to pay medical costs or living expenses related to a claim under this chapter, the employer or insurance carrier owing compensation shall reimburse that governmental unit any compensation awarded or paid if the governmental unit has given the parties to the claim written notice stating that it provided the assistance and the cost of the assistance provided. Reimbursement for living expenses shall equal the lesser of either the amount of assistance the governmental unit provided or two-thirds of the amount of the award or payment remaining after deduction of attorney fees and any other fees or costs chargeable under ch. 102. The employer or insurance carrier shall reimburse the governmental unit for all medical costs related to a claim under this chapter. The medical reimbursement shall not be deducted from the employee's award or payment. The department shall comply with this paragraph when making payments under s. 102.81. *Comment. This bifurcates the formula for reimbursement. The insurer would continue to reduce the employee's award to reimburse living expenses. There would be no reduction for reimbursing medical expenses. While current law does not specify that reimbursement shall come from the claimant's award (it merely sets the formula for determining reimbursement), the department has always applied it that way. Insurers--not governmental units providing public assistance or employees--should be responsible for the entire cost of medical bills.*

Open records	102.31(8) 102.33	SECTION 1. 102.31 (8) of the statutes is amended to read: The Wisconsin compensation rating bureau shall provide the department with any information it requests relating to worker's compensation insurance coverage, including but not limited to the names of employers insured and any insured employer's business, business status, type and date of coverage, manual premium code, and policy information endorsements and reinstatement dates. The department may enter into contracts with the Wisconsin compensation rating bureau to share the costs of data processing and other services. The Wisconsin compensation rating bureau may authorize the department to publish or release information obtained by the bureau under s. 626.32(1) (a). The department shall not make that information public except as authorized by the rating bureau. SECTION 2. 626.32 (1) (a) of the statutes is amended to read: 626.32 (1). ACQUISITION OF INFORMATION. (a) *General.* Every insurer writing any insurance specified under s. 626.03 shall report its insurance in this state to the bureau at least annually, on forms and under rules prescribed by the bureau. The bureau must file, pursuant to rules adopted by the department of workforce development, a record of such reports with the department. No such information may be made public by the bureau or any of its employes except as authorized or required by law and in accordance with its rules. *Comment. The Council agreed to this change in principle in the last session. In 1982, the AG determined that records of organizations like WCRB are not subject to Wisconsin's Open Records law. See May 7, 1982 letter to Insurance Commissioner Susan Mitchell. In April 1999, the AG supported the Department's refusal to release that WCRB insurer information from a database shared by WCRB and the WC Division. The Division assumes that Datalister, Inc., a Florida firm, intended to use the insurance policy information to solicit employers. The AG encouraged the Department to clarify the statutory intent. This proposal codifies the long-standing working relationship between the Department and the Rating Bureau and is supported by both agencies. In August 1999, Datalister successfully sued to obtain similar data under Arizona and Minnesota laws.*
Typographical error	102.32(5)	Amend 102.32(5) as follows: Any insured employer may, within the discretion of the department, compel the insurer to discharge, or to guarantee payment of its liabilities in any such case under this section and thereby release himself or herself from compensation liability therein, but if for any reason a bond furnished or deposit made under sub. (4) does not fully protect, the compensation insurer or ~~uninsured~~ insured employer, as the case may be, shall still be liable to the beneficiary thereof. *Comment. In the context of a subsection dealing with the relationship of an insured employer to its insurer, the reference to an "***un***insured" employer is absurd.*

Prompt PPD payments	102.32(6)	Amend 102.32(6) as follows: If compensation is due for permanent disability following an injury or if death benefits are payable, payments shall be made to the employee or dependent on a monthly basis. Compensation for permanent disability shall begin within 30 days after the end of the employee's healing period or after the insurer receives a medical report with a permanent disability rating, whichever is later. If the insurer notifies the claimant within 30 days after the end of temporary disability or after receiving the rating, whichever is later, that the insurer is scheduling an examination under s. 102.13(1), compensation shall begin within 14 days after the insurer receives the examining report, or within 90 days after the notice to the claimant of the intent to schedule the exam, whichever is earlier. Payments for permanent disability shall continue on a monthly basis, and shall accrue and be payable between intermittent periods of temporary disability, including payments based on the minimum permanent disability ratings set by rule if the insurer has clear information regarding the nature of the injury or the surgery. The department may direct an advance on a payment of unaccrued compensation or death benefits if it determines that the advance payment is in the best interest of the injured employee or his or her dependents. In directing the advance, the department shall give the employer or the employer's insurer an interest credit against its liability. The credit shall be computed at 7%. *Comment.* *1. In October 2000, the Department proposed codifying the 30-day payment standard and clarifying how to handle intermittent periods of PPD and temporary disability to a group of about 40 experienced insurance claims handlers and supervisors. In November 2000, an insurance attorney requested the extension for IMEs, with 30 days to give notice of intent to schedule the IME and a 90-day limit on starting payments (even if the IME is not done by then).* *2. This also clarifies that if PPD is due because of the minimum ratings in DWD 80.32, it is due during weeks in which no temporary disability is paid--regardless of whether there is an end of healing, permanency rating, or return to work.*

Admin rules; Electronic media	102.37	Amend 102.37 as follows: Employers' records. Every employer of 3 or more persons and every employer who is subject to this chapter shall keep a record of all accidents causing death or disability of any employee while performing services growing out of and incidental to the employment. This record shall give the name, address, age and wages of the deceased or injured employee, the time and causes of the accident, the nature and extent of the injury, and any other information the department may require by rule or general order. Reports based upon this record shall be furnished to the department at such times and in such manner as it may require by rule or general order, ~~upon forms~~ in a format approved by the department. *Comment.* *1. The term "rule" has replaced the phrase "general order" in almost all other statutory usage. However, since both terms are occasionally used elsewhere (e.g., s. 103.005, which is cross-referenced in s. 102.39) the reference to general orders is retained rather than deleted). The same change is proposed in 102.37, 102.38, 102.39, 102.57 and 102.58* *2. The requirement to use a "form" is unnecessarily restrictive. The statute is more restrictive than the electronic reporting rule, DWD 80.02(3). The Department allows and encourages insurers to provide required information in other formats--fax, EDI and over the internet.*
Admin rules; Electronic media; Insurer reports	102.38	Amend 102.38 as follows: Records of payments; reports thereon. Every insurance company which transacts the business of compensation insurance, and every employer who is subject to this chapter but whose liability is not insured, shall keep a record of all payments made under this chapter and of the time and manner of making the payments, and shall furnish reports based upon these records or any other information to the department as it may require by rule or general order, ~~upon forms~~ in a format approved by the department. *Comment.* *1. Just as employers must provide any information required by rule in 102.37, insurers should provide any information required by rule, not just payment information. For example, insurers (not employers) now provide the first report of injury (WKC-12). See DWD 80.02(2).* *2. General order is an obsolete term. The same change is proposed in ss. 102.37, 102.38, 102.39, 102.57 and 102.58*
Admin. rules	102.39	Amend 102.39 as follows: General orders; application of statutes. The provisions of s. 103.005 relating to the adoption, publication, modification and court review of rules or general orders of the department shall apply to all rules or general orders adopted pursuant to this chapter. *Comment. The same change is proposed in ss. 102.37, 102.38, 102.39, 102.57 and 102.58*

Wage offset	102.43(6)(b)	Amend 102.43(6)(b) as follows: Wages received from other employment held by the employee when the injury occurred shall be considered in computing actual wage loss from the employer in whose employ the employee sustained the injury, if the employee's weekly temporary disability benefits are calculated under s. 102.11(1)(a). <u>If the employe's wage is expanded under s. 102.11(1)(a) the employe's earnings from other employment held at the time of injury shall be offset against that expanded wage not the actual wage at the time of injury</u>. *Comment. This would clarify that the offset against the* **expanded** *wage is only for workers who had more than one job at the time of injury. [For people who get a second job* **after** *the injury the offset has always been taken against the* **actual** *pre-injury wage, not the wage expanded under s. 102.11(1)(a).] 2-Job wage earners were clearly relying on the 2-job wages prior to the injury. For this reason, in 1985, the offset was eliminated. In 1988, the offset was restored to prevent what some saw as unjust enrichment. However, the offset was intended to be against the expanded wage to prevent undue hardship. Unfortunately, the statutory language has never been clear. In recent years, there have been more and more arguments on this point. And, recent LIRC decisions have added to the confusion, by adding wages from both jobs to determine both the TTD rate and the offset--something the department has never done. Typically, the problem addressed by this change occurs when the worker who is hurt on a part-time job is able to* **partially** *return to work at the full-time job. (Once they have returned full-time to the full-time job, the offset will almost always reduce TTD to zero regardless of whether it is taken against the actual or expanded wage from the part-time job.) The problem is that the higher wage from a partial return to the full-time job almost immediately offsets the actual wage from a (typically) lower paying part-time job. Even when the offset is made against the expanded wage, the worker is still making far less than prior to the injury from both jobs (that is, there is no unjust enrichment.) In short, the department believes the 1988 offset against the* **expanded** *wage was a compromise between* **no** *offset and offsets against* **actual** *wage.*
Admin. rules	102.57	Amend 102.57 as follows: Violations of safety provisions, penalty. If injury is caused by the failure of the employer to comply with any statute<u>, rule</u> or any lawful order of the department…. *Comment. The same change is proposed in ss. 102.37, 102.38, 102.39, 102.57 and 102.58*
Admin. rules	102.58	Amend 102.58 as follows: Decreased compensation. If injury is caused by the failure of the employee to use safety devices which are provided in accordance with any statute<u>, rule</u> or lawful order of the department…. *Comment. The same change is proposed in ss. 102.37, 102.38, 102.39, 102.57 and 102.58*
Vocational rehabilitation	102.61(1m)	Delete obsolete reference to Department of Health and Family Services *Comment. DVR is now a sub-unit of DWD, not DHFS.*

Uninsured Employers Fund	102.81(2) and Chapter 20	Amend 102.81(2) as follows: **(2)** The department may retain an insurance carrier or insurance service organization to process, investigate and pay claims under this section and may obtain excess or stop-loss reinsurance with an insurance carrier authorized to do business in this state in an amount that the secretary determines is necessary for the sound operation of the uninsured employers fund. In cases involving disputed claims, the department may retain an attorney to represent the interests of the uninsured employers fund and to make appearances on behalf of the uninsured employers fund in proceedings under ss. 102.16to 102.29. Section 20.918and subch. IV of ch. 16 do not apply to an attorney hired under this subsection. The charges for the services retained under this subsection shall be paid from the appropriation under s. 20.445(1)(hp). The cost of any reinsurance obtained under this subsection shall be paid from the appropriation under s. ~~20.445(1)(sm)~~ 20.445(1)(hp). *Comment.* *1. The proposal would shift the cost of the UEF excess insurance coverage ($180,000-220,000 annually) from the Fund itself to the annual assessment on insurance carriers and self-insurers.* *2. This will help protect the long-term solvency of the Fund. In the first 4.5 years, the UEF paid more than $2.1 million in benefits and $837,000 in excess insurance premiums. Excess insurance costs were 30% of the total $2.9 million paid from the fund since 1996. As of January 31, 2001, the Fund balance is $8.8 million, with outstanding loss reserves and IBNR claims of $2.4 million. The percentage of UEF assets encumbered by outstanding loss reserves and IBNR claims is 27.43%.* *3. The cost of the excess policy is about 30% of the annual payments out of the Fund, so it has a large impact on solvency. Yet, the excess policy cost is small in comparison to the Division's $10 million annual operating budget, the estimated $40 million in annual premiums generated for private insurance companies by UEF enforcement, and $1.1 billion a year in direct WC insurance premiums earned in Wisconsin (7^{th} in the nation in 1999).*

Benefits or penalties (excluding those related to UEF or s. 102.11 wage statute)	102.17(3) 102.18(1)(bp) 102.22(1) 102.35(1) 102.35(2) 102.44(1)(a) 102.44(1)(b) 102.475(1) 102.475(2)(c) 102.48(1) 102.49(5) 102.49(6) 102.50 102.555(3) 102.565(1) 102.57 102.58 102.59(2) 102.60(9) 80.03(1)(d)	Excluding the UEF (for which the department would not recommend any changes) there are 10 statutory dollar penalty amounts in Chapter 102. Excluding the wage statute (s. 102.11) there are 17 dollar amounts in the statutes and rules that affect benefits. Five are both penalties and benefits; i.e., the penalty is paid as a benefit to the worker. *Comment. The Department is not recommending any specific change. The Council regularly reviews the wage levels in s. 102.11. Several people have suggested that the Council should periodically review the level of other penalty and benefit provisions. The Department suggests that members review the list to determine for themselves if the dollar amounts continue to meet the policy objectives for which they were enacted.*

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